TESTIMONY IN OPPOSITION TO SENATE BILL 918

Greetings and thank you for the opportunity to speak on this matter.

I am a seven year veteran of the United States Navy. I have deployed to Forward Operating Base Shield in Sadr City, Iraq. I have also served overseas in Japan, and have served two years as a legal advisor to the Naval Special Warfare Community. My personal decorations include two Naval Achievement Medals, the Navy Commendation Medal, and the Bronze Star Service Medal. I am a past Chair of the Connecticut Bar Association's Veterans and Military Affairs Section. I have served as both a military prosecutor and a military defense counsel in both the medical separation process and the administrative separation process. I strongly oppose this bill as do many, many other honorably discharged veterans.

Connecticut has already taken a progressive and forward leaning approach to ensuring veterans who may have been treated unfairly due to mental health issues receive benefits without going through the military upgrade process. This proposed bill goes beyond that and effectively says that there is no distinction between an honorable discharge and an adverse characterization of service, as long as someone is eligible for *some* VA benefit. It renders an honorable discharge meaningless in the eyes of the State of Connecticut.

There is a great deal of misinformation being presented about the military discharge process, and the military service record upgrade process. It troubles me, as a veteran, to hear how often the military is disparaged during these discussions, often by those who claim to have the best interests of veterans in mind. I find myself asking, can someone truly respect my service while vilifying that which I served?

A picture is being painted that the military goes out of its way to abuse and victimize members of the armed forces. This could not be further from the truth in my experience. Should members of this committee wish to read neutral and objective materials that outline the actual procedures, including the explicit guidance given to cases involving mental health issues, I would be happy to provide them. I have a number of contacts at the Army Judge Advocate General's School, the institution tasked with training Army Judge Advocates to represent service members through the discharge process, who would happy to assist with this. There is a detailed, thorough, and fair system in place both to ensure the correct characterization of discharge is given in each case, and to create a safety net for cases that may have yielded an unfair result. The military has made great strides to recognize prior issues with undiagnosed medical and mental health issues, and has provided clear and specific guidance to address these issues going forward, as well as guidance to discharge upgrade boards to ensure records are corrected where warranted. I understand some would disagree with my characterization of this process as one of fairness and careful deliberation. However, I would submit to this committee, particularly any attorneys on the committee, that the mere fact a person loses an argument does not mean the system was unfair. Sometimes you simply have a bad case.

The fact only a percentage of discharges are upgraded could equally suggest that, with the increased guidance and directives issued, the boards are getting the discharges right the first time.

My oppositions to this bill can be categorized into four basic objections, each of which will be discussed in detail in turn. First, as written it would yield absurd results in so far as who is eligible for benefits. Second, it would interfere with good order and discipline functions that should be left within the exclusive province of the military. Third, it is vehemently opposed by the majority of veterans whose voices are being drowned out and ignored by advocacy groups who represent only a small fraction of the veteran population. And finally, I oppose this bill because an honorable discharge should mean something in this state.

The Bill as Written Will Yield Absurd Results.

Veterans whose discharge status is listed as other than honorable may still request review by the VA. The VA will then determine whether or not the Veteran's period of service is honorable for VA disability purposes or dishonorable for VA purposes. Any veteran whose period of service is found to be dishonorable for VA purposes becomes ineligible for VA benefits. It is possible to separate service into periods of "honorable for VA purposes" and periods of "dishonorable for VA purposes," particularly with multiple re-enlistments. The proposed bill makes no allowance for this. Moreover, VA determinations are made based on applications for specific individual benefits. A determination for eligibility for one benefit does not automatically entitle an individual to all benefits. The VA takes a very permissive approach to approving requests for healthcare benefits, under the logic that it is better to err on the side of caution, especially in matters of mental health, and ensure people receive necessary care. Federal law, however, makes explicitly clear that these determinations do not entitle an individual to benefits that would require an honorable discharge as issued by the DoD. They are two separate and distinct procedures. An easy analogy would be to look at VA healthcare as an elaborate and well-funded worker's compensation system. Someone need not be a stellar employee in order to be entitled to compensation for injuries occurring as part of their work. The same is true of military healthcare. Many other federal benefits, however, explicitly require an honorable discharge, regardless of any VA determination. An individual who wishes to obtain these benefits must use the DoD discharge upgrade process, even if he is receiving benefits through the VA.

This law creates an end run around that process, undermining the DoD's policy in reserving certain benefits as rewards for honest and faithful service.

I give the following cases as examples of individuals whom the military sought to discipline who would be rewarded by the State of Connecticut under the law as written.

Sailor One was assigned to a Littoral Combat Ship. He was caught in possession of child pornography. However, he was the only IT support sailor on his ship. The ship was about to go on a major overseas deployment. As long as this sailor remained in this billet, the ship could not replace him. As long as he was pending investigation, he could not access computers. A court-

martial could take at least a year. This would leave the ship underway with no one to manage their computer systems. Upon confirming that federal authorities could assert jurisdiction for prosecution, the ship elected to separate him via an administrative separation hearing in order to fill his billet before the ship got underway. He was never charged by the military, and so the other than honorable in lieu of court-martial bar would not apply. At the time of his separation, he had not yet been convicted, so the bar based on a felony conviction would similarly not apply. However, he was on his second enlistment. Under VA regulations, he would be "honorable for VA purposes" for any injuries sustained in his first enlistment (and there are always injuries). Should Connecticut honor someone who was kicked out of the service for possessing child pornography?

Sailor Two was assigned to a Minesweeper. He was caught groping members of the ship's company while they slept. The male victims, as is very common for male victims of sexual assault, did not wish to testify at a court-martial and make their abuse public knowledge. The command honored the privacy wishes of the victims and instead elected to separate the member via administrative separation proceedings. He was not charged with "Homosexual Conduct with Aggravating Circumstances," as it was clear to all that DADT was (thankfully) on its way out the door and the command did not care about the sailor's sexual orientation. To the command, the gender of his victims was irrelevant. The command cared only about the fact that he was sexually assaulting members of the crew. He was not separated based on "aggravated homosexual conduct" which would, ironically, have likely been a bar to honorable for VA Purposes determinations. He was separated instead for commission of a serious offense. However, he had no prior disciplinary history and would not fall under the pattern of misconduct provisions. He was also in his second enlistment. Should Connecticut honor a person who sexually abuses his shipmates?

Sailor Three was assigned to an Aircraft Carrier. He was caught selling "spice," a synthetic drug popular in Japan. Sailors had been instructed not to consume this substance, due to its similarity to marijuana and the impact that would have on military safety, especially as spice could not be detected on a military urinalysis, a fact well known among the fleet. Because spice is not a scheduled narcotic, existing criminal charges pertaining to distribution of narcotics did not apply. Rather than risk potential appellate issues and have the individual remaining on base for the lengthy amount time it would take to proceed to a court-martial, the command elected to separate him for violation of a general order. He was also in his second enlistment. Should Connecticut honor a person who operated an illegal drug ring on a US Navy vessel?

Sailor Four was a supervisor at a military hospital who had multiple allegations of sexual harassment against him. He was initially charged under the UCMJ and sent to an article 32 hearing, the military equivalent of a hearing on probable cause. The investigating officer substantiated the allegations, but advised that they belonged at a lesser disciplinary forum, as such misconduct would not be criminal in the civilian world. The matter was sent instead to an administrative separation hearing. This does not constitute an other than honorable in lieu of a court-martial, because the matter was sent to a lesser forum on the advisement of an investigating

officer, not as part of a plea negotiation. This sailor was in his third enlistment. Should Connecticut honor a person who engaged in repeated harassment of female servicemembers?

Sailor Five was assigned to a Destroyer overseas. Shortly into his second enlistment, he decided to go AWOL in a foreign country. He was apprehended by NCIS just shy of the 180 day mark that would have created a barrier to characterization as honorable for VA Purposes. He was administratively separated. Should Connecticut honor a person who abandons his unit and only returns when apprehended by law enforcement?

Sailor Six had a lengthy criminal history prior to joining the service. In 1990, most likely under the hugely ill-advised "jail or military" policies of the era, he joined the Navy. After five months in the service, he was involved in a gang shootout while on leave. (The member claims he was shot in his dress uniform. Newspaper accounts of the shooting containing statements from eyewitnesses dispute this fact and recall gang colors displayed by both the member and the shooters.) After receiving medical treatment, the member failed a drug test. As he had less than six years of service, his command was able to separate him with a general under honorable conditions discharge without convening a separation board. This is a commonly used practice when a command just wants someone gone quickly. Since leaving the service, this individual has received a 100% disability rating from the VA for PTSD he allegedly suffered as a result of being shot while on leave, exacerbated by a later stabbing after his separation from service. Current VA guidance is to take a liberal and permissive approach to all mental health claims. Despite receiving VA disability payments in the amount of nearly $3500 per month, this individual has continued to engage in repeated criminal misconduct including assaults and violations of protective orders, most recently having pleaded guilty to an armed robbery, and conspiracy to commit armed robbery. Should Connecticut honor a person who made no meaningful contribution to the armed forces and has habitually victimized residents of this state?

These cases address individuals who can and likely have received honorable for VA Purposes characterizations. With regards to the first portion of the proposed amendment addressing individuals with qualifying conditions, the statute has no requirement that the qualifying conditions be the proximate cause of the servicemember's bad paper, as would be required for an individual seeking a discharge upgrade under the DoD. Under that procedure, an individual is entitled to an upgrade to honorable if the misconduct that led to their separation was linked, even tangentially, to their underlying condition. For example, a soldier who was separated for a DUI could (and should) be upgraded to honorable if it was determined that his alcohol abuse was an attempt to self-medicate an undiagnosed case of PTSD. This statute has no such requirement, despite the legislative intent of the 2018 bill regarding qualifying conditions being fairly clear that this was the intention. To make sure individuals whose grounds for separation stemmed from invisible wounds be restored to full eligibility status. This is also, incidentally, the policy of the DoD and the guidance given both to separation boards, and discharge upgrade boards.

Under the drafting of this bill, however, the condition itself suffices and need have no nexus to the basis of separation. This becomes problematic given the fact that the VA, for good reason, is

taking a very permissive approach to mental health claims even well after the fact, and will rarely, if ever, question an individual's claim of mental health issues.

In light of that, consider these fact patterns:

Sailor Seven was stationed overseas where he committed a violent sexual assault against a prostitute. Due to confusion on the part of the military jury who believed their sentence of ten years confinement automatically included a punitive discharge, he was not discharged from the Navy as part of his court-martial sentence. Instead, he was administratively separated with an OTH once the omission had been noted. Should he find a sympathetic doctor to diagnose him with PTSD, even though it played no role in his sexual assault, he would be eligible under this statute. Should Connecticut honor a person who commits a violent rape?

Sailor Eight was a military physician who sexually assaulted twenty-three people *that we know of*. Because he was an officer, he did not receive a bad conduct or dishonorable discharge. These are not authorized discharges for an officer. Instead, he received a dismissal. The statute is silent on dismissals. Were he to simply walk into a doctor's office and get a diagnosis of PTSD, even though that condition had nothing to do with his repeated and horrific criminal behavior, he would be eligible under this proposed change. Should Connecticut honor a person who sexually assaulted twenty-three women?

None of these cases are "dramatic hypotheticals" or exercises in law school issue spotting. Each represents a real fact pattern of which I have personal knowledge. It is interesting to note how many of these scenarios involve allegations of sexual misconduct. The military is often accused of not doing enough to prevent sexual assault. Yet in each of these instances, the military *did* attempt to address sexual assault or harassment, and to ensure meaningful consequences attached to such misconduct. Their efforts in doing so would be directly undermined by this statute. This statute would lift the punishments the military imposed on these predators and place them on equal footing with the very victims the military sought to protect.

Furthermore, if anything, this bill will encourage fraudulent VA claims in order to obtain additional gratuitous benefits not otherwise available. The rise in fraudulent VA claims is already a matter of concern and has been written on extensively. Many mental healthcare providers, often speaking under conditions of anonymity, have acknowledged to multiple news outlets that VA fraud is common and prevalent. The VA is under guidance to not scrutinize or question claims of mental health issues, again in the interests of casting a wide net and ensuring all who need care are able to get treatment. When the issue is simply free access to healthcare, this does not pose an issue to society as a whole and few veterans raise an eyebrow. People deserve effective healthcare, even when they have not been model citizens.

When the reward goes beyond that, however, it has the potential to create great harm as it 1) increases the number of fraudulent VA claims; 2) contributes to a VA backlog which prevents truly disabled veterans from receiving timely assistance; 3) takes finite resources away from those

who truly need them; 4) deters truly disabled individuals from seeking help, especially mental healthcare, as they do not want to be associated with obvious malingerers; and 5) continues to create negative stereotypes about veterans by either artificially inflating the reported number of veterans with mental health issues, or by creating suspicions that veterans are receiving too many unearned entitlements. Indeed, a simple google search reveals a host of blogs and internet forums dedicated to sharing tips on how to "scam the VA" and "max out" your benefits. These stereotypes lead to resentment and distrust among the civilian population, and are directly reflected in the issue of veteran underemployment.

When civilian employers think all veterans are broken or taking advantage of society's generosity, they do not hire veterans. Veteran underemployment remains one of the most serious issues for veterans and their financial and mental stability.

This Proposal Interferes with the Military's Ability to Administer Good Order and Discipline.

This proposed bill, and others like it, seek to end-run the Department of Defense procedures any time an individual gets an answer they don't like. Connecticut should not be serving as an appellate authority over the DoD.

The discharge characterization is a necessary tool in ensuring good order and discipline within the armed forces. In the military, when there is no discipline, people die. One need look no further than the Inspector General reports following the tragedy aboard the USS Fitzgerald to see the truth of this statement. If there is no consequence for misconduct in the armed forces, then there is no deterrent to engage in misconduct. Under this law, the only consequence for misbehavior is losing a job you probably didn't like all that much anyway, and getting to got to UCONN for free. That is hardly a sword of Damocles strong enough to ensure good behavior. Imagine, if you will, any other job in which an individual could provide less than a year of sub-par performance, perhaps even committing criminal acts against other members of the workplace, and then be rewarded after being terminated.

The administrative separation process gives commanders a middle ground between retaining an individual who is creating problems within the unit, and using the more draconian court-martial process which would leave the servicemember with a federal criminal record. The DoD has made clear that a determination of honorable for VA Purposes is NOT the same as an honorable discharge, and gratuitous benefits that are explicitly predicated on an honorable discharge are not available to the individual unless they go through the formal DoD discharge upgrade process. This is to strike a balance between the humanitarian interest in allowing people access to healthcare for medical issues incurred during their employment, and the need to enforce discipline with real and meaningful consequences.

Frequently, as a Judge Advocate, my advice to commanders regarding minor criminal misconduct was simple. "Do you feel strongly that this person needs jail time and/or a criminal record, or do

you simply want him out of the unit and will taking away some of his veteran's benefits be enough to send the message?" Invariably, the commanders elected the lesser forum which still gave a deterrent effect for others within the unit while not overly penalizing the servicemember, allowing them to move on in their civilian life. Were this bill to become law, as a Judge Advocate, I would no longer have given that advice. The advice I would give would be "If you want to make sure there is a real consequence, you need to convene a court-martial."

Connecticut should not be enacting laws that directly undermine military commanders.

This Proposal is Not Supported by the Majority of Veterans.

It is important that this committee recognize that veterans are not a monolith, and that vocal groups that purport to speak for veterans do not necessarily reflect the views of the veteran community as a whole. In recent years, many veterans service organizations, especially newer ones, have become increasingly political, which is off-putting to many veterans. Similarly, organizations that have loud voices in Washington have also had repeated public scandals involving misuse of grant funding, hostile work environments, and Stolen Valor violations. In light of this, many veterans do not join these groups, and so their views and opinions are not reflected in statements by these groups.

It is worth noting that three of the oldest and most reputable VSOs, the Veterans of Foreign Wars (VFW), the American Legion, and American Veterans (AMVETS) all require a medical or honorable discharge (or current continued service) as a prerequisite to membership. Eligibility to compete in the Warrior Games, and the Invictus Games, adaptive sports competitions for wounded service members, is also conditioned on honorable service. To the veteran community, honorable still has meaning.

Other than honorable discharges represent approximately two percent of all discharges. Punitive discharges at court-martial, less than that. The vast majority of discharges are honorable, with a smaller percentage general under honorable conditions. The honorable discharge is, in fact, the default. To earn less requires a member to be separated for misconduct. Even those who are separated may still (and often do) receive an honorable discharge if, on the whole, their good service outweighed their bad. This is why veterans feel very strongly that those who do not receive an honorable discharge should not be given equal status with those who do. The majority of veterans do, however, fully support the right of an individual to appeal their discharge through the appropriate discharge review board procedures.

In order to confirm what I knew anecdotally from conversations within the veteran community, I conducted a survey to see where veterans stood on this issue. The survey was open for the month of December 2020, and was published on an army-centric blog site with high readership, a navy-centric blog site with high readership, and a networking site for past and current Judge Advocate General Corps officers. The link was freely sharable, and anyone who participated in the survey

was able to forward the survey to other veterans. The veteran or current active duty status of all participants was independently verified.

When asked if they felt non-medical veteran benefits should be extended to all regardless of length of service or characterization of discharge, 93.7% of respondents answered no. Another 2.36% would be willing to consider it only on a case-by-case basis. Only 79.3% felt that medical benefits should be denied, showing that veterans feel stronger about the "gratuitous" benefits than they do about healthcare. Interestingly, 67% of the respondents were officers, the people who are tasked with making command decisions regarding good order and discipline and who would be imposing those discharge characterizations, again supporting my previous point about good order and discipline and the need to respect the authority of military commands.

I also took a social media survey, asking the simple question "should individuals who did not serve honorable be considered veterans and be entitled to the same benefits as those who served honorably?" Here is a sampling of quotes from those who responded:

-"I think it should stay the way it is. Plenty of options for getting mode of discharge corrected or updated. Do think that system needs some reinforcement and streamlining." Air Force Afghanistan vet.

-"If you were not honorably discharged you are not a veteran and do not deserve the title or the benefits." Army Afghanistan vet.

-" Honorable/Medical or GTFO. BCNR is there for when the service gets it wrong. We're doing better recognizing self-med issues tied to combat stress in service members, which needs to continue and should get handled as part of a Medical discharge process." Navy GWOT era vet/current reservist.

-"No." Navy Iraq vet.

-" Honorable Yes, below that go through the review process, if your discharge is upgraded Yes, if your discharge is not upgraded then no." Air Force Cold War era vet.

-(In response to the above statement) "EXACTLY what I was going to say... But with way more swearing." Army National Guard Gulf War vet.

This Bill Negates the Value of Honorable Service

We live in an era where the participant trophy is all too common. However, when everyone is special, no one is special. Connecticut has been a leader in recognizing and valuing the contributions of those who served with honor in the armed forces. It is one thing to say "thank you for your service." It is another thing entirely to recognize and reward that service.

In evaluating this bill, this committee has a simple choice before it. What message does this committee want to send to the overwhelming majority of veterans who honor their commitment to their nation and complete their service honorably? Again, the honorable discharge is the default, not the rare exemplary exception. Does an honorable discharge mean anything to the State of Connecticut? Are the benefits so generously given by this legislature and this state rewards in

appreciation for service to our nation, or are they simply handouts thrown as crumbs because we have decided that veterans are a broken group unable to survive without charity? What value does this committee place on an honorable discharge?

Having worked in the military legal system for over seven years, I believe the system is fair, and continues to strive for improvement. However, in any system, there will be people who fall through the cracks. The answer is to fix the cracks, not dismantle the entire system. I fully support any and all efforts to restore benefits to the rare individuals who were not treated fairly under the separation process due to mental health issues, as Connecticut has already done. I further fully support complete access to mental healthcare for any individuals, regardless of their discharge characterization. But a more effective way to assist these individuals would be to provide funding for advocates to champion them through the discharge upgrade process; to provide retroactive benefits for any individuals who do get their discharges upgraded in the case of an injustice; and to leverage our political capital to work with our federal representatives to streamline and expedite the process. We are blessed in this state to have many Senators and Congressional Representatives who have taken a sincere and passionate interest in military issues. We should use that.

And we should stop making decisions based on inaccurate, negative stereotypes about the military that both offend and harm the veteran community. We should not come at this from the assumption that because everyone does not get the result they wanted, the system is unfair and therefore we at the state level should dismantle it to the detriment of those who served honorably.

I cannot support any legislation that effectively tells me that my honoring my commitment to my country, doing what was asked of me, and serving honorably doesn't really matter to the state in which I was raised. Again, when you vote on this bill, ask yourselves. What is an honorable discharge worth in the State of Connecticut?

Respectfully,

Emily Trudeau